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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|---|-------------|-------------------------|-------------------------------|------------------|
| 09/298,763  | 04/23/1999  | RAHN WOOD               |                               | 2415             |
| 7590<br>Kenyon & Kenyon<br>ONE BROADWAY<br>NEW YORK, NY 10004 | 02/20/2009  |                         | EXAMINER<br>CHAMPAGNE, DONALD |                  |
|   |             | ART UNIT<br>3688        | PAPER NUMBER                  |                  |
|   |             | MAIL DATE<br>02/20/2009 | DELIVERY MODE<br>PAPER        |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/298,763             | WOOD ET AL.         |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Donald L. Champagne    | 3688                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 0 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 November 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-39 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 32-37 is/are allowed.
- 6) Claim(s) 1-31,38 and 39 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 April 1999 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Withdrawal of Office Actions***

1. All Office actions subsequent to the BPAI decision mailed on 25 September 2006 are hereby WITHDRAWN because of errors in procedure on the part the examiner, as explained in para. 2 and 3 below.

### ***Allowable Subject Matter***

2. Claims 32-37 are allowed, for the reasons given in the BPAI decision mailed 25 September 2006. An updated allowance search was completed and is made of record herein. It identified prior art, Kepecs (US006009411A), equivalent to that previously cited. However, Kepecs fails to teach or suggest a patentable limitation, a "list of rewards".

### ***Request to Reopen Prosecution Not Entered***

3. The amendment filed 27 November 2006, seeking further prosecution of claims 1-31, 38 and 39 finally rejected by the BPAI in its decision of 25 September 2006, is NOT ENTERED. Prosecution may be reopened by the applicant after a final decision by the BPAI only in accordance with 37 CFR § 1.198, i.e., only by filing an RCE in accordance with 37 CFR § 1.114.

### ***Further Action by Applicant***

4. In summary, claims 32-37 stand allowed by the BPAI decision mailed 25 September 2006 and claims 1-31, 38 and 39 stand finally rejected by the same BPAI decision. Applicant used the original two-month time period to file the defective request to reopen prosecution, but applicant may petition for an extension of time, up to four months from the mailing date of this Office action, under 37 CFR § 1.304 to seek judicial review, or under 37 CFR § 1.136 to reopen prosecution before the primary examiner.
5. Should applicant choose to accept allowance of claims 32-37, applicant must file an amendment after-final, with the appropriate fee and petition for extension of time, cancelling claims 1-31, 38 and 39. **Applicant need NOT file an RCE for this purpose provided the reply is filed within ONE MONTH of the mailing date of this Office action.** Beyond one month the examiner will have to re-search the claims and an RCE will be required.

6. The examiner can cancel the claims by examiner's amendment, but the request must be accompanied by authorization to debit a deposit account for a one-month extension of time.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
8. There is NO shortened statutory period for reply to this final action. Applicant must petition for an extension of time (para. 4 above) in order to reply to this final Office action.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 571-272-6717. The examiner can normally be reached Monday, Wednesday morning, and after Noon on Thursday and Friday. The examiner can also be contacted by e-mail at [donald.champagne@uspto.gov](mailto:donald.champagne@uspto.gov), and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717.
10. The examiner's supervisor, James W. Myhre, can be reached on 571-272-6722.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
12. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, **the application is subject to abandonment four months after mailing of this Office action.** The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, [www.uspto.gov](http://www.uspto.gov). At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.